

Message Text

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70

ACTION ARA-20

INFO OCT-01 ISO-00 SPC-03 AID-20 EB-11 NSC-10 RSC-01

CIEP-02 TRSE-00 SS-20 STR-08 OMB-01 CEA-02 CIAE-00

COME-00 FRB-02 INR-10 NSAE-00 XMB-07 OPIC-12 LAB-06

SIL-01 L-03 H-03 PA-04 PRS-01 USIA-15 DRC-01 /164 W

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P 202232Z NOV 73

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC PRIORITY 297

INFO AMEMBASSY LIMA

LIMITED OFFICIAL USE BOGOTA 9519

E.O. 11652: N/A

TAGS: EGEN CO

SUBJ: OPIC AND ANDEAN PACT FOREIGN INVESTMENT CODE

REF: (A) STATE 227167 (NOTAL); (B) BOGOTA 9180

1. EMBASSY DOES NOT CONSIDER DISCUSSIONS BETWEEN OPIC AND GOC
TIMELY AS YET, NOR ARE WE ABLE TO SAY IF OR WHEN THEY WOULD
BECOME APPROPRIATE. FOREIGN OFFICE ALMOST TOTALLY ENGAGED LAST
TWO WEEKS WITH LA FONMINS CONFERENCE, AND CONSIDERATION OF
RELATIONSHIP BETWEEN OPIC AND PROVISIONS OF ARTICLE 51 HAS BARELY
BEGUN. EMB'S APPROACHES THUS FAR STRICTLY ON INFORMAL BASIS AND IT
UNLIKELY THAT ANY GOC OFFICIALS PREPARED TO BEGIN DETAILED DIS-
CUSSIONS ON SOLUTIONS TO QUESTIONS OF SUBROGATION AND ARBITRATION.
WE MIGHT ALSO NOTE THAT HANNA/CHEVRON NICKEL PROJECT, MOST
POTENTIALLY URGENT INVESTMENT DECISION WITH OPIC RAMIFICATIONS,
SEEMS TO BE STALLED PENDING INTERNAL GOC DECISIONS ON MINING
POLICY.

2. FONOFF OFFICIAL MOST DIRECTLY INVOLVED TENTATIVELY SUGGESTS
THREE POSSIBLE APPROACHES. FIRST IS SOMEWHAT LEGALISTIC INTER-
PRETATION OF "STATES" (LOS ESTADOS) AS USED IN ART 51 TO EXCLUDE
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GOVERNMENT AGENCIES SUCH AS OPIC ENGAGED IN TRADITIONALLY

PRIVATE RATHER THAN PUBLIC ACTIVITIES. SECOND IS IDEA MENTIONED
REF B OF GOC ADVISING OPIC THAT COLOMBIAN LAW ALREADY PROVIDES
FOR SUBROGATION SO THAT NO SPECIFIC CLAUSES, AS PROSCRIBED
BY ART 51, ARE NECESSARY. IF NEITHER OF THESE APPROACHES FEASIBLE,
HE RAISED POSSIBILITY OF GOC QUESTIONING RATIONALE OF ART 51,
AT LEAST AS IT AFFECTS COLOMBIA, IN ANDEAN PACT CONTEXT.

3. COLOMBIA PRESENTLY WORKING ON ITS REGULATIONS FOR FOREIGN
INVESTMENT CODE. NATIONAL INDUSTRIAL ASSOCIATION ACTIVELY
PARTICIPATING AND REPORTEDLY HAS QUESTIONED APPROPRIATENESS OF
SOME OF CODE'S PROVISIONS FOR COLOMBIA. ART 51 QUESTION WILL BE
REFERRED NOT ONLY TO OTHER GOC AGENCIES BUT ALSO TO INDUSTRIALISTS
SO THAT THEY ARE AWARE OF ITS IMPINGEMENT ON OPIC OPERATIONS. IN
THIS SITUATION IT COULD WELL BE COUNTERPRODUCTIVE FOR USG TO TAKE
ACTIVE ROLE.

4. WHAT EMBASSY WOULD FIND MOST USEFUL WOULD BE REACTION TO
INFORMAL SOUNDINGS REPORTED SO FAR AS REQUESTED PARA 7 REFTTEL B
AND SUGGESTION OF POSSIBLE PARAMETERS OF WHAT OPIC WOULD HOPE
FOR IN COLOMBIA.
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